

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**JONATHAN PAUL JOHNSON,**

**Petitioner,**

**v.**

**CASE NO. 19-3109-SAC**

**STATE OF KANSAS,**

**Respondent.**

**MEMORANDUM AND ORDER**

This case comes before the Court on Petitioner Jonathan Paul Johnson’s petition for writ of habeas corpus under 28 U.S.C. § 2254. On August 9, 2019, the Court entered an order (ECF No. 10) granting Petitioner until September 9, 2019, to show cause why this matter should not be dismissed for lack of subject matter jurisdiction and as barred by the exhaustion requirement. The order states that “[t]he failure to file a response may result in the dismissal of this matter without additional prior notice.” (ECF No. 10, at 4.) Petitioner has failed to file a response within the allowed time, and the petition is dismissed.

Rule 11 of the Rules Governing Section 2254 Cases requires a district court to issue or deny a certificate of appealability (“COA”) upon entering a final adverse order. A COA may issue only if the petitioner made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). “When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid

claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The failure to satisfy either prong requires the denial of a COA. *Id.* at 485. The Court finds nothing in the present record that suggests its ruling is debatable or an incorrect application of the law and therefore declines to issue a certificate of appealability.

**IT IS THEREFORE BY THE COURT ORDERED** that this Petition seeking relief under 28 U.S.C. § 2254 is **dismissed**.

**IT IS FURTHER ORDERED** that Petitioner’s Application to Proceed without Prepayment of Fees and Affidavit by a Prisoner (ECF No. 2) is **denied** as Petitioner was not a prisoner upon filing.

**IT IS FURTHER ORDERED** that Petitioner’s Motion to Proceed without Payment of Fees (ECF No. 4) is **granted**.

**IT IS FURTHER ORDERED** that Petitioner’s Motion for Appointment of Counsel (ECF No. 8) is **denied** as moot.

**IT IS SO ORDERED.**

**DATED: This 16<sup>th</sup> day of October, 2019, at Topeka, Kansas.**

s/ Sam A. Crow  
**SAM A. CROW**  
**U.S. Senior District Judge**